

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

PLATINUM MANAGEMENT (NY) LLC;  
PLATINIUM CREDIT MANAGEMENT, L.P.;  
MARK NORDLICHT;  
DAVID LEVY; DANIEL SMALL; URI  
LANDESMAN; JOSEPH MANN;  
JOSEPH SANFILIPPO; and JEFFREY  
SHULSE;

Defendants

1:16-cv-06848 (DLI) (VMS)

**NOTICE OF MOTION  
TO DISMISS UNDER FEDERAL  
RULE OF CIVIL PROCEDURE 25(a)(1)**

**PLEASE TAKE NOTICE THAT** on a date and time set at the convenience of the Court, the Estate of Uri Landesman will move the Honorable Brian M. Cogan at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, for an Order dismissing this action against Uri Landesman under Federal Rule of Civil Procedure 25(a)(1). In support of this motion, the Estate of Uri Landesman will rely on the accompanying memorandum of law. Oral argument is requested.

Dated: April 2, 2019  
Newark, New Jersey

By: /s/ Eric R. Breslin  
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Defendants

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1:16-cv-06848 (DLI) (VMS)

**MEMORANDUM OF LAW IN SUPPORT OF THE ESTATE OF URI LANDESMAN’S  
MOTION TO DISMISS THE COMPLAINT AGAINST URI LANDESMAN**

The Estate of Uri Landesman (the “Estate”) respectfully submits this memorandum of law in support of its motion to dismiss the Complaint against him in his personal capacity, filed by Plaintiff Securities and Exchange Commission (the “SEC”) on December 19, 2016, under Federal Rule of Civil Procedure 25(a)(1). As the SEC failed to substitute the Estate as a party with ninety days of receiving formal notice of Mr. Landesman’s death, filed on this Court’s docket, the case against Mr. Landesman should be dismissed, and the SEC precluded from substituting in the Estate.

## FACTS

On December 19, 2016, the SEC filed the Complaint against Mr. Landesman and others. (ECF No. 1). Mr. Landesman died on September 14, 2018. (ECF No. 390). On October 4, 2018, former counsel for Mr. Landesman, now counsel for the Estate, filed a notice under Federal Rule of Civil Procedure 25, advising all parties of Mr. Landesman's death. (*Id.*). It has been almost six full months since the notice of Mr. Landesman's death was filed, but the SEC has not moved to substitute the Estate as a defendant in this action. Under Rule 25(a) the Complaint against Mr. Landesman should be dismissed with prejudice.<sup>1</sup>

## ARGUMENT

Rule 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

As the Second Circuit noted, courts "routinely dismiss cases with prejudice where there is a failure to comply with the time period specified by Rule 25(a)." *Mulvey v. Sonnenschein Nath & Rosenthal LLP*, No. 08-CV-1120, 2011 U.S. Dist. LEXIS 125787, at \*3 (E.D.N.Y. Oct. 31, 2011) (collecting cases); *Nicosia v. United States*, No. 11-CV-5069, 2014 U.S. Dist. LEXIS 89600, at \*2 (E.D.N.Y. July 1, 2014) (dismissing action where plaintiff failed to file motion for substitution for five months after notice of death was made); *Louis v. Wright*, No. 12-CV-6333, 2017 U.S. Dist. LEXIS 47980, at \*3

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<sup>1</sup> The time for the SEC to substitute counsel expired during the government shutdown. The shutdown ended on January 25, 2019. It has been nearly three months since the end of the government shutdown, and the SEC has still not moved to substitute the proper party. Additionally, it should be noted that this case was stayed by an Order dated July 7, 2017. The Estate maintains that the time limits imposed by Rule 25 still apply.

(E.D.N.Y. Mar. 30, 2017) (dismissing action where plaintiff failed to file motion for substitution for fourteen months after notice of death was made).

Counsel for Mr. Landesman, now counsel for the Estate, his successor in interest, filed notice of Mr. Landesman's death on October 4, 2018. The SEC's time to substitute in the Estate as a successor party lapsed on January 2, 2019. Even accounting for the government shut down, the SEC has still missed the deadline by several months. Accordingly, under Rule 25(a)(1), the action against Mr. Landesman should be dismissed.

Dated: April 2, 2019  
Newark, New Jersey

By: /s/ Eric R. Breslin .

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